

REMARKS

This is a complete response to the outstanding Office Action mailed on May 8, 2009. Applicant respectfully requests reconsideration. Claims 1-4, 6-11, 13-15, 17-18, 20 and 22-25 were previously pending in this application. Claims 1, 8 and 25 have been amended. As a result, claims 1-4, 6-11, 13-15, 17-18, 20 and 22-25 are pending for examination with claims 1 and 25 being independent claims. No new matter has been added.

**35 USC §103**

The Examiner has rejected claims 1-4, 6, 9-10, 13, 24 and 25 under 35 USC 103(a) as being unpatentable over McLennan (US Patent No. 5,199,621, hereinafter "McLennan") in view of Borawski (US Design Patent 342,155, hereinafter "Borawski"). Applicant respectfully traverses this rejection.

Amended Claim 1 claims a drum stick holder that comprises a plurality of substantially parallel tubular sleeves. Each sleeve extends between opposite sleeve ends and is joined to at least one adjacent sleeve and has at one or both of the ends an entrance with dimensions suitable for receiving just one drum stick. At least one of the sleeves has an entrance at both of the ends and

each sleeve is formed from an integral tube of elastomeric material that extends fully around a longitudinal axis of the sleeve. Each entrance is fully open and the plurality of sleeves are arranged in a single row so that each sleeve may hold a drum stick inserted into the entrance at one or both of the ends of the sleeves.

The Examiner acknowledges that McLennan does not teach the limitation that the sleeve extends fully around a longitudinal axis of the sleeve. Applicant also asserts that McLennan describes pairs of loops. These pairs of loops have different diameters that hold a tapered drumstick when inserted from only one end. McLennan states that a first set of "loops (12) are sized to be smaller in circumference than the holding end (32) of the drumsticks, and the [second set of] loops (34) are sized to be smaller in circumference than the striking end (22) of the drumsticks" (see column 4, lines 26-30). As disclosed, the drumstick holder of McLennan only allows for insertion of the drumsticks in one direction. As stated in McLennan, "the striking ends of the drumsticks are near the short parallel side of the trapezoid and the holding ends or handles are near and usually extending beyond the long parallel side of the trapezoid" (see

column 2, lines 42-45). McLennan also requires that the drum stick be held at two points along its length, by both the first set of loops and the second set of loops. The two rows created by the two sets of loops in McLennan also have different spacing such that when drum sticks are inserted from one direction the handles are splayed outwards (see Figure 5 and Figure 10). There is no suggestion, teaching or motivation in McLennan that the two rows could be placed into a single row. If there were a single row, then the drumsticks would not be splayed outwards. There is also no suggestion, teaching or motivation in McLennan that drumsticks can be inserted from either end. Rather, the insertion of drumsticks from either end is impossible given the disclosure of McLennan due to the tapering and varying sizes of the first and second set of loops. Applicant claims a plurality of tubular sleeves that are arranged in a single row so that each sleeve may hold a drum stick inserted into the entrance at one or both of the ends of the sleeves.

The combination of McLennan and Borawski does not cure the above deficiencies. Applicant asserts that there would have been no motivation to combine McLennan and Borawski because the two patents come from entirely different scientific fields.

Therefore, a person having ordinary skill in the art of the design of drumstick holders would not look outside that art into the field of fishing lure cards in order to locate a solution to a problem. Additionally, even if there were motivation to combine McLennan and Borawski, the combination would not result in Applicant's claims because the combination of McLennan and Borawski does not actually teach all of the limitations of Applicant's claims. Borawski discloses a fishing lure holder in which one end of each of the tubes is half covered such that a fishing lure could not be pushed into the tube from this end. Borawski only discloses inserting a fishing lure from the fully open end. Therefore, the combination of McLennan and Borawski does not disclose Applicant's claimed invention of a drumstick holder with substantially parallel tubular sleeves having at one or both ends an entrance for receiving just one drum stick with each entrance being fully open and with the tubular sleeves being arranged in a single row.

Applicant asserts that proposing that McLennan could be modified with Borawski into Applicant's claimed invention would render the prior art invention of McLennan unsatisfactory for its intended purpose. McLennan requires that "the central drumstick

lies along the longitudinal axis of the trapezoid, and the outer drumsticks lie along the inclined edges of the trapezoid, at an angle to the central drumstick. The intermediate drumsticks make intermediate angles with the central drumstick. The stored drumstick configuration thus is fan-shaped or radiating, with the drumsticks making a small angle with each other" (see column 2, lines 35-45). Modifying the alignment of the two sets of loops in McLennan into the configuration found in Borwaski would teach away from the object of the invention in McLennan. As stated in McLennan, "the fan-shaped drumstick configuration provides enough distance between the held ends of the drumsticks, so that each drumstick can be extracted from storage without interference from neighboring stored drumsticks." Applicant concludes that the combination of McLennan and Borawski would render McLennan unsatisfactory for its intended purpose. Therefore, there is no suggestion or motivation to make the proposed modification. Applicant asserts that the above arguments also apply to the 103 rejection of independent claim 25.

The Applicant also respectfully submits that since claims 2-4, 6-11, 13-15, 17-18, 20 and 22-24 depend on independent claim 1, claims 2-4, 6-11, 13-15, 17-18, 20 and 22-24 contain all

limitations of independent claim 1. Since independent claim 1 should be allowable, as argued herein, pending dependent claims 2-4, 6-11, 13-15, 17-18, 20 and 22-24 should be allowed as a matter of law for at least this reason. In re Fine, 5 U.S.P.Q.2d 1596, 1608 (Fed. Cir. 1988). Applicant respectfully requests reconsideration and withdrawal of the claim 103 rejections based on McLennan and Borawski. The Applicant also respectfully submits that Gillis, Calasibetta, Leduchowski, Warrick and Pond do not cure the above deficiencies. Therefore, claims 1-4, 6-11, 13-15, 17-18, 20 and 22-25 should be allowed for at least the above reasons.

**Prior Art Made of Record**

The prior art made of record has been considered, but is not believed to affect the patentability of the presently pending claims.

CONCLUSION

The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, the Director is hereby authorized to charge any deficiency or credit any overpayment in the fees filed, asserted to be filed or which should have been filed herewith to our Deposit Account Number 02-3285, under Docket Number DUMMETT-056X.

Respectfully submitted,

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